

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

CRIMINAL No. 11-1204 LH

WARREN RIVERA,

Defendant

MEMORANDUM OPINION AND ORDER

THIS MATTER comes on for consideration of Defendant's Refiled Motion for Mistrial (Docket No. 94), filed December 6, 2011. The Court, having reviewed the Motion, the government's Response, and the applicable law, and otherwise being fully advised, finds that the Motion is not well taken and it will be **denied**.

On October 18, 2011, following a jury trial, the Verdict finding Defendant guilty of being a felon in possession of a firearm, as charged in the Indictment, was entered in this matter. (Docket No. 75.) The following day, Defendant filed his Motion for Mistrial (Docket No. 78), which he renewed with permission of the Court, on December 6, 2011.

The Court finds that it is without authority to consider this Motion. As the Ninth Circuit Court of Appeals recently held, Federal Rule of Criminal Procedure 26.3 "does not state explicitly that mistrial can be declared only *before* a verdict is rendered or a judgment entered, but that limitation is clearly the implicit assumption." *United States v. Alvarez-Moreno*, 657 F.3d 896, 900

(2011). Therefore, any post-verdict declaration of a mistrial would be error. *Id.* at 901. Furthermore, even if the Court could consider the Motion, it would have to be denied for the reasons stated in the Memorandum Opinion and Order addressing Defendant's Refiled Motion for a New Trial.

WHEREFORE,

IT IS HEREBY ORDERED that Defendant's Refiled Motion for Mistrial (Docket No. 94), filed December 6, 2011, is **DENIED**.



SENIOR UNITED STATES DISTRICT JUDGE